

of information to be submitted, or the submitter may submit any additional detailed information which further supports the truth of the information previously supplied to EPA in its initial substantiation, under this section.

(2) The submitter may claim as confidential any trade secret or confidential business information contained in the supplemental information. To claim this material as confidential, the submitter shall clearly designate those portions of the supplemental information to be claimed as confidential by marking those portions "Confidential," or "Trade Secret." Information not so marked will be treated as public and may be disclosed without notice to the submitter.

(3) If portions of the supplementary information are claimed confidential, an owner, operator, or senior official with management responsibility of the submitter shall certify that those portions of the supplemental information claimed as confidential would, if disclosed, reveal the chemical identity being claimed as confidential or would reveal other confidential business or trade secret information.

(4) If supplemental information is requested by EPA and the submitter claims portions of it as trade secret or confidential, then the submitter shall submit to EPA two copies of the supplemental information, an unsanitized and a sanitized version.

(i) The unsanitized version shall contain all of the information claimed as trade secret or business confidential, marked as indicated above in paragraph (e)(2) of this section.

(ii) The second copy shall be identical to the unsanitized substantiation except that it will be a sanitized version, in which all of the information claimed as trade secret or confidential shall be deleted. If any of the information claimed as trade secret in the supplemental information is the chemical identity which is the subject of the substantiation, the submitter shall include the appropriate generic class or category of the chemical claimed as trade secret.

§ 350.9 Initial action by EPA.

(a) When a claim of trade secrecy, made in accordance with § 350.5 of this

part, is received by EPA, that information is treated as confidential until a contrary determination is made.

(b) A determination as to the validity of a trade secrecy claim shall be initiated upon receipt by EPA of a petition under § 350.15 or may be initiated at any time by EPA if EPA desires to determine whether chemical identity information claimed as trade secret is entitled to trade secret treatment, even though no request for release of the information has been received.

(c) If EPA initiates a determination as to the validity of a trade secrecy claim, the procedures set forth in §§ 350.11, 350.15, and 350.17 shall be followed in making the determination.

(d) When EPA receives a petition requesting disclosure of trade secret chemical identity or if EPA decides to initiate a determination of the validity of a trade secrecy claim for chemical identity, EPA shall first make a determination that the chemical identity claimed as trade secret is not the subject of a prior trade secret determination by EPA concerning the same submitter and facility, or if it is, that the prior determination upheld the submitter's claim of trade secrecy for that chemical identity at that facility.

(1) If EPA determines that the chemical identity claimed as trade secret is not the subject of a prior trade secret determination by EPA concerning the same submitter and the same facility, or if it is, that the prior determination upheld the submitter's claim of trade secrecy, then EPA shall review the submitter's claim according to § 350.11.

(2) If such a prior determination held that the submitter's claim for that chemical identity is invalid, and such determination was not challenged by appeal to the General Counsel, or by review in the District Court, or, if challenged, was upheld, EPA shall notify the submitter by certified mail (return receipt requested) that the chemical identity claimed as trade secret is the subject of a prior, final Agency determination concerning the same facility in which it was held that such a claim was invalid. In this notification EPA shall include notice of intent to disclose chemical identity within 10 days pursuant to § 350.18(c) of this subpart. EPA shall also notify the petitioner by

regular mail of the action taken pursuant to this section.

§ 350.11 Review of claim.

(a) *Determination of sufficiency.* When EPA receives a petition submitted pursuant to § 350.15, or if EPA initiates a determination of the validity of a trade secrecy claim for chemical identity, and EPA has made a determination, as required in paragraph (d)(1) of § 350.9, then EPA shall determine whether the submitter has presented sufficient support for its claim of trade secrecy in its substantiation. EPA must make such a determination within 30 days of receipt of a petition. A claim of trade secrecy for chemical identity will be considered sufficient if, assuming all of the information presented in the substantiation is true, this supporting information could support a valid claim of trade secrecy. A claim is sufficient if it meets the criteria set forth in § 350.13.

(1) *Sufficient claim.* If the claim meets the criteria of sufficiency set forth in § 350.13, EPA shall notify the submitter in writing, by certified mail (return receipt requested), that it has 30 days from the date of receipt of the notice to submit supplemental information in writing in accordance with § 350.7(e), to support the truth of the facts asserted in the substantiation. EPA will not accept any supplemental information, in response to this notice, submitted after the 30 day period has expired. The notice required by this section shall include the address to which supplemental information must be sent. The notice may specifically request supplemental information in particular areas relating to the submitter's claim. The notice must also inform the submitter of his right to claim any trade secret or confidential business information as confidential, and shall include a reference to § 350.7(e) of this regulation as the source for the proper procedure for claiming trade secrecy for trade secret or confidential business information submitted in the supplemental information requested by EPA.

(2) *Insufficient claim.* If the claim does not meet the criteria of sufficiency set forth in § 350.13, EPA shall notify the submitter in writing of this fact by certified mail (return receipt requested). Upon receipt of this notice, the submit-

ter may either file an appeal of the matter to the General Counsel under paragraph (a)(2)(i) of this section, or, for good cause shown, submit additional material in support of its claim of trade secrecy to EPA under paragraph (a)(2)(ii) of this section. The notice required by this section shall include the reasons for EPA's decision that the submitter's claim is insufficient, and shall inform the submitter of its rights within 30 days of receiving notice to file an appeal with EPA's General Counsel or to amend its original substantiation for good cause shown. The notice shall include the address of the General Counsel, and the address of the office to which an amendment for good cause shown should be sent. The notice shall also include a reference to § 350.11(a)(2)(i)-(iv) of this subpart as the source on the proper procedures for filing an appeal or for amending the original substantiation.

(i) *Appeal.* The submitter may file an appeal of a determination of insufficiency with the General Counsel within 30 days of receipt of the notice of insufficiency, in accordance with the procedures set forth in § 350.17.

(ii) *Good Cause.* In lieu of an appeal to the General Counsel, the submitter may send additional material in support of its trade secrecy claim, for good cause shown, within 30 days of receipt of the notice of insufficiency. To do so, the submitter shall notify EPA by letter of its contentions as to good cause, and shall include in that letter the additional supporting material.

(iii) Good cause is limited to one or more of the following reasons:

(A) The submitter was not aware of the facts underlying the additional information at the time the substantiation was submitted, and could not reasonably have known the facts at that time; or

(B) EPA regulations and other EPA guidance did not call for such information at the time the substantiation was submitted; or

(C) The submitter had made a good faith effort to submit a complete substantiation, but failed to do so due to an inadvertent omission or clerical error.